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**House, No. 3573**

**Presented by: Kevin G. Honan**

**For legislation to preserve publicly assisted affordable housing**

**1/20/2009H** Referred to the Joint Committee on Housing

**1/20/2009S** Senate concurred

Public Hearing date 5/5 at 10:30 AM in Hearing Room A1

**6/24/2009H** Accompanied a new draft, see H04132

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**HOUSE . . . . . No. 3573**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Kevin G. Honan**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act preserving publicly assisted affordable housing.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kevin G. Honan	17th Suffolk
Cleon H. Turner	1st Barnstable
Sarah K. Peake	4th Barnstable
William Lantigua	16th Essex
Christine E. Canavan	10th Plymouth
Matthew C. Patrick	3rd Barnstable
Elizabeth A. Malia	11th Suffolk
Martha M. Walz	8th Suffolk
Todd M. Smola	1st Hampden
John P. Fresolo	16th Worcester
Louis L. Kafka	8th Norfolk
William N. Brownsberger	24th Middlesex
Michael J. Moran	18th Suffolk
Cheryl A. Coakley-Rivera	10th Hampden
Carl M. Sciortino, Jr.	34th Middlesex
Denise Provost	27th Middlesex
Antonio F.D. Cabral	13th Bristol
Steven J. D'Amico	4th Bristol
Christopher J. Donelan	2nd Franklin

James B. Eldridge	Middlesex and Worcester
Peter v. Kocot	1st Hampshire
Stephen L. DiNatale	3rd Worcester
John V. Fernandes	10th Worcester
William Lantigua	16th Essex
Timothy J. Toomey, Jr.	26th Middlesex
Tom Sannicandro	7th Middlesex
John W. Scibak	2nd Hampshire
Linda Dorcena Forry	12th Suffolk
Kate Hogan	3rd Middlesex
Kay Khan	11th Middlesex
Martin J. Walsh	13th Suffolk
Barbara A. L'Italien	18th Essex
Kathi-Anne Reinstein	16th Suffolk
Michael F. Rush	10th Suffolk
Kevin Aguiar	7th Bristol
Geraldo Alicea	6th Worcester
Katherine Clark	32nd Middlesex
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Sean Garballey	23rd Middlesex
Denis E. Guyer	2nd Berkshire
Mary E. Grant	6th Essex
Lida E. Harkins	13th Norfolk
Jonathan Hecht	29th Middlesex
James J. O'Day	14th Worcester District
Alice Hanlon Peisch	14th Norfolk
Steven M. Walsh	11th Essex
Byron Rushing	9th Suffolk
Jeffrey Sánchez	15th Suffolk
Thomas M. Stanley	9th Middlesex
Ellen Story	3rd Hampshire
Peter J. Koutoujian	10th Middlesex
Harriette L. Chandler	First Worcester
Patricia D. Jehlen	Second Middlesex
Colleen M. Garry	36th Middlesex
David B. Sullivan	6th Bristol
Cynthia Stone Creem	First Middlesex and Norfolk
Thomas M. McGee	Third Essex and Middlesex
Kenneth J. Donnelly	Fourth Middlesex
Thomas P. Kennedy	Second Plymouth and Bristol
James E. Timilty	Bristol and Norfolk
Benjamin Swan	11th Hampden

Robert A. O'Leary

Susan C. Tucker

Cape and Islands

Second Essex and Middlesex



10 "Affordability restriction", a limit on rents that an owner may charge for occupancy of a rental  
11 unit in a publicly assisted housing development or a limit on tenant income for persons or families  
12 seeking to qualify for admission to such housing.

13 "CEDAC", the Community Economic Development Assistance Corporation established in  
14 chapter 40H.

15 "Chief executive officer", the mayor in a city and the board of selectmen in a town unless  
16 otherwise is designated by a municipal charter.

17 "Department", the department of housing and community development or, when applicable, its  
18 designee, or any successor agency of the department.

19 "Designee", a municipality, local or regional housing authority, nonprofit or for-profit  
20 corporation or other entity qualified to do business in the commonwealth and, which is selected by the  
21 department to operate publicly-assisted housing that is decent, safe and sanitary affordable housing, under  
22 subsection (b) of section 3.

23 "Enhanced section 8 vouchers", vouchers provided under 42 U.S.C. 1437f(t) or other  
24 substantially equivalent assistance.

25 "Extremely low income", a household income of not more than 30 per cent of the area median  
26 income, adjusted for household size, as periodically determined by the United States Department of  
27 Housing and Urban Development.

28 "Government program", a program which provides government assistance under a program set  
29 forth in the definition of publicly-assisted housing.

30 "Low income", a household income of not more than 80 per cent of the area median income,  
31 adjusted for household size, as periodically determined by the United States Department of Housing and  
32 Urban Development.

33 "Owner", a person, firm, partnership, corporation, trust, organization, limited liability company or  
34 other entity, or its successors or assigns, that holds title to a publicly-assisted housing development.

35 "Prepayment", (i) the payment in full or the refinancing of a governmental-insured or  
36 government-held mortgage indebtedness prior to its original maturity date; (ii) the voluntary cancellation  
37 of mortgage insurance on a publicly assisted housing development; or (iii) the payment in full on a  
38 government contract, any of which would have the effect of removing either: (i) the affordability  
39 restrictions applicable to the publicly-assisted housing development; or (ii) a requirement to renew any  
40 such affordability restrictions.

41 "Preserve affordability", with respect to a publicly-assisted housing development, to undertake  
42 reasonable and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing  
43 development in order to maintain at least the same number of units affordable to low, very low and  
44 extremely low-income households, respectively, as are currently occupied by such households, and to  
45 maintain as affordable to such households generally all units that are currently vacant, to the extent of  
46 available subsidies and taking into account the need to ensure that the development provides quality  
47 housing to its tenants.

48 "Protected low-income tenant", a low-income tenant residing in a publicly-assisted housing  
49 development on the date of termination of the government program and whose rent was restricted by that  
50 government program.

51 "Publicly-assisted housing", a housing unit or development that receives government assistance  
52 under any of the following programs: (i) section 8 of the United States Housing Act of 1937 and 42  
53 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation,

54 property disposition and loan management set-aside programs or any other program providing project-  
55 based rental assistance; (ii) section 42 of the Internal Revenue Code and 26 U.S.C. section 42, the federal  
56 Low-Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act  
57 of 1965 and 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder;  
58 (iv) section 202 of the Housing Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the  
59 National Housing Act 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)  
60 section 221(d)(4) of the National Housing Act 12 U.S.C. section 1715I (d)(4) to the extent the project's  
61 rents are restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act  
62 and 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section 1485;  
63 (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban Development  
64 Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to  
65 such program are restricted pursuant to a government agreement; (xi) the Housing Development Action  
66 Grant, and 42 U.S.C. section 1437o to the extent the project's rents are restricted pursuant to a  
67 government agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program  
68 provided for annually in item 7004-9024 of section 2 of the general appropriation act as that program  
69 applies to project-based rental assistance; (xiv) the Massachusetts low income housing tax credit program  
70 established in section 6I of chapter 62; (xv) the State Housing Assistance for Rental Production, chapter  
71 established in 574 of the acts of 1983; and (xvi) chapter 121A to the extent that the affordability of  
72 dwelling units are restricted pursuant to a written agreement with the affected municipality.

73 "Purchase contract", a document that purports to sell a publicly-assisted housing development  
74 including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other  
75 similar instrument.

76 "Regulatory agreement", an affordable housing restriction that establishes an owner's obligations  
77 created pursuant to the efforts of the department or its designee to preserve affordability and which is  
78 consistent with section 31 of chapter 184 provided that in any project that is eligible for participation in



79 the HUD mark up to market program, the restriction, insofar as it relates to the limiting of the level of  
80 rents, shall not apply to units covered by a section 8 housing assistance payment contract so long as such  
81 contract is effective.

82 "Sale", the execution of a written agreement pursuant to which the owner or the holders of an  
83 ownership interest in the owner of the publicly assisted housing agrees to the disposition of the property  
84 by deed or otherwise, whether through a single transaction or a series of transactions, except for a  
85 disposition of such housing to an affiliate of the owner.

86 "Subsidy", public financial assistance including, but not limited to, grants, loans, rental  
87 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance pursuant to  
88 any government program or any other form of assistance, intended to make housing affordable to low-  
89 income households, especially very low and extremely low-income households.

90 "Tenant", a person legally entitled to possession or occupancy of a rental unit within publicly-  
91 assisted housing, including a subtenant, lessee and sublessee.

92 "Tenant organization", an organization established by the tenants of a publicly-assisted housing  
93 development for the purpose of addressing issues related to their living environment and which meets  
94 regularly, operates democratically, is representative of all residents in the development, is completely  
95 independent of owners, management and their representatives and which has filed a notice of its existence  
96 with CEDAC; provided, however, that, no owner or other third party shall be required to ascertain the  
97 organization's compliance with this definition.

98 "Termination", the cessation, discharge or removal of an affordability restriction affecting a  
99 publicly-assisted housing development in the absence of a simultaneous replacement of that restriction  
100 with an equivalent affordability restriction including, but not limited to: (i) nonrenewal or termination, in  
101 whole or in part, of a government program contract or mortgage; (ii) expiration, in whole or in part, of an  
102 affordability restriction under a government program or the requirement to renew the restriction; (iii)

103 payment in full of a government program mortgage; or (iv) prepayment of a government program  
104 mortgage or contract.

105 "Time for performance", the date for delivery of the deed or other document evidencing a sale  
106 pursuant to a purchase contract or any extension thereof.

107 "Very low income", having a household income of not more than 60 percent of the area median  
108 income, adjusted for household size, as periodically determined by the United States Department of  
109 Housing and Urban Development.

110 Section 2. (a) Except with respect to property subject to an affordability restriction which has  
111 less than 2 years remaining and, for which subsection (e) shall apply, the owner shall provide written  
112 notice to: (i) all tenants and the tenant organization; (ii) the chief executive officer of the affected  
113 municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the  
114 affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from  
115 taking actions to terminate an affordability restriction during any notice period provided herein; provided,  
116 however, that the owner shall comply with all of the notice terms and restrictions pursuant to subsections  
117 (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted housing; (2)  
118 the name and address of the owner; (3) notification that an affordability restriction may terminate; (4) the  
119 date on which each affordability restriction may terminate; and (5) such other information as required by  
120 the department. Where more than 1 termination may occur, the owner may send 1 written notice so long  
121 as the terminations are scheduled to occur within 1 year of each other, the notice is given at least 24  
122 months before the earliest termination and the notice otherwise complies with this subsection.

123 (b) An owner shall not complete a termination or allow a termination to occur unless, not less  
124 than 1 year before the completion of the last termination event affecting the housing, the owner provides  
125 the entities identified in subsection (a) with written notice of intent to complete termination. The notice  
126 shall state: (1) the address of the publicly-assisted housing; (2) the name and address of the owner; (3) the

127 date on which the owner intends to complete termination; (4) unless section 6 applies, a statement that the  
128 department has the right of offer pursuant to section 3; and (5) such other information as required by the  
129 department.

130 (c) An owner shall not sell publicly-assisted housing before offering the department the  
131 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in writing, the  
132 parties identified in subsection (a) of the owner's intention to potentially sell the property.

133 (d) A notice required by this chapter shall be deemed given when delivered in person or mailed  
134 by certified or registered mail, return receipt requested, to the party to whom notice is required. A notice  
135 to the affected municipality shall be awarded to the chief executive officer.

136 (e) The notice requirements of this section shall not be affected by the status of an offer,  
137 purchase contract or sale under section 3 or section 4.

138 Section 3. (a) An owner shall offer the department an opportunity to purchase the property prior  
139 to entering into an agreement to sell the property pursuant to the time periods contained in this section,  
140 but no owner shall be under any obligation to enter into an agreement to sell such property to the  
141 department.

142 (b) The department may select a designee to act on its behalf as purchaser of the publicly-  
143 assisted housing and shall give the owner and CEDAC written notice of its selection. The department  
144 shall promptly consult with the affected municipality before selecting a designee and shall immediately  
145 designate the affected municipality as its designee upon written request of the affected municipality,  
146 unless the department determines that such request is not feasible for reasons set forth in the department's  
147 regulations. The department shall enter into a written agreement with its selected designee providing that  
148 the designee and any of its successors or assigns, agree to preserve the affordability of the publicly  
149 assisted housing. Once such an agreement is executed, the designee shall assume all rights and  
150 responsibilities attributable to the department as a prospective purchaser under this section and section 4.

151 At any time prior to a sale under section 3 or section 4, the department may revoke its designation and  
152 assume the designee's rights and responsibilities, either in its own capacity or by selecting a new  
153 designee; provided, however, that no change in a designation shall operate to extend or alter any time  
154 periods for performance set forth in this chapter or in any purchase contract entered into pursuant to this  
155 chapter.

156 (c) The department shall, within 90 days after it receives notice pursuant to section 2 of the  
157 owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure  
158 by the department to submit a timely offer shall constitute an irrevocable waiver of the department's  
159 rights under this section and the owner may sell the publicly-assisted housing subject to section 4. If the  
160 owner accepts the department's initial or any revised offer, the owner and the department shall enter into  
161 such other agreements as are necessary and appropriate to complete the sale. If the owner and the  
162 department have not entered into an agreement to sell the property to the department within 90 days after  
163 receipt of the notice pursuant to subsection (c) of section 2, the owner may enter into an agreement to sell  
164 the property to a purchaser of the owner's choice, subject to the department's right of first refusal  
165 pursuant to section 4.

166 (d) At any time after the notice in section 2 has been provided and within 10 days of receiving a  
167 request, the owner shall make documents available to the department for review and photocopying during  
168 normal business hours at the owner's principal place of business or at a commercial photocopying facility.  
169 Such documents shall include, but not limited to: (1) any existing architectural plans and specifications of  
170 the development; (2) itemized lists of monthly operating expenses and capital expenditures in each of the  
171 2 preceding calendar years; (3) any capital needs studies or market studies that have been submitted to a  
172 federal, state, or local agency in the preceding 3 years; (4) utility consumption rates for the preceding 12  
173 months; (5) copies of the last 2 annual financial and physical inspection reports filed with federal, state or  
174 local agencies; (6) the most recent rent roll showing then current vacancies and rent arrearages; (7) a list  
175 of vacant units; and (8) a statement of the approximate annualized vacancy rate at the development for

176 each of the 2 preceding calendar years. Documents obtained pursuant to a request under this subsection  
177 shall not be considered public records, as defined in clause Twenty-sixth of section 7 of chapter 4, and the  
178 department shall not make such documents available to the public without the written consent of the  
179 owner or pursuant to a court order, provided, however, that disclosure may be made to potential funding  
180 sources, regulatory agencies or agents or consultants of the department in connection with the transaction,  
181 subject to appropriate confidentiality agreements. Upon request and with appropriate notice, the owner  
182 shall also permit reasonable inspections of the dwelling units, building systems, common areas, and  
183 common grounds by agents, consultants and representatives of the department including, but not limited  
184 to, inspections related to environmental, engineering, structural or zoning matters.

185 (e) Not later than 30 days after the department submits an offer to purchase the publicly-assisted housing  
186 development pursuant to subsection (c), the department shall notify tenants in the housing development  
187 and shall meet with them at least once to discuss the department's plans.

188 Section 4. (a) The department shall have a right of first refusal to purchase any publicly-assisted  
189 housing development under this section. At any time after the 90 days the department has been given  
190 notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such  
191 notice, the owner may execute a purchase contract with a third party to sell the publicly-assisted housing  
192 development provided that the owner complies with this section. Thereafter, the owner again shall be  
193 subject to the notice provision of subsection (c) of section (2).

194 (b) Upon execution of a third party purchase contract, the owner shall, within 7 days, submit a  
195 copy of the contract to the department and CEDAC, along with a proposed purchase contract for  
196 execution by the department. The department shall, within 30 days after receipt of the third party  
197 purchase contract and the proposed purchase contract, execute the proposed purchase contract or such  
198 other agreement as is acceptable to the owner and the department. The time periods set forth in this  
199 subsection may be extended by agreement between the owner and the department. The proposed

200 purchase contract shall contain the same terms and conditions as the executed third party purchase  
201 contract, except that the proposed purchase contract shall provide at least the following terms: (i) the  
202 earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase contract;  
203 (2) 2 per cent of the sales price; or (3) \$250,000; provided, however, that the earnest money deposit shall  
204 be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the  
205 department; (ii) the earnest money deposit shall be nonrefundable unless the owner fails to perform its  
206 obligations with due diligence for a period of not less than 90 days from the date of execution of the  
207 purchase contract or such greater period as provided for in the third party purchase contract; and (iii) the  
208 time for performance shall be not less than 240 days from the date of the execution of the purchase  
209 contract, or such greater period as provided for in the third party purchase contract.

210 (c) If the department fails to execute the proposed purchase contract within 30 days or such other  
211 period as provided in subsection (b), the owner shall have 24 months from the last day on which the  
212 department was entitled to execute the proposed purchase contract in which to complete the sale of the  
213 owner's publicly-assisted housing development to a third party, except as provided in subsection (e).  
214 Upon the expiration of the 24-month period, the owner shall be subject again to all of subsection (c) of  
215 section 2, section 3 and this section.

216 (d) If the department executes the proposed purchase contract as provided in subsection (b) but  
217 fails to perform as provided in the executed purchase contract, then the owner shall have 2 years from the  
218 date on which the proposed purchase contract terminated in which to complete the sale of the owner's  
219 publicly-assisted housing development to a third party on economic terms and conditions that are not  
220 materially more favorable to the proposed purchaser than the economic terms and conditions in the  
221 proposed purchase contract offered to the department. Upon the expiration of the 24-month period, the  
222 owner shall be subject to subsection (c) of section 2, section 3 and this section.

223 (e) The department may make a counter offer by executing and submitting to the owner an  
224 amended proposed purchase contract. The owner shall have 30 days from the date it receives the  
225 amended proposed purchase contract to execute the amended proposed purchase contract or reject, in  
226 writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months from the date on  
227 which the owner rejects the department's counter offer to complete the sale of the owner's publicly-  
228 assisted housing development to a third party, provided, however, that if such sale is: (i) upon economic  
229 terms and conditions that are materially more favorable to the proposed purchaser than the economic  
230 terms and conditions in the proposed purchase contract offered to the department; or (ii) upon terms that  
231 are substantially the same as was offered by the department in the counter offer, then the owner shall  
232 provide a copy of the new third party purchase contract, along with a proposed purchase contract for  
233 execution by the department which shall contain the same terms and conditions as the executed third party  
234 purchase contract, and the department shall have 30 days from the date it receives the third party purchase  
235 contract and the proposed purchase contract to execute the proposed purchase contract or such other  
236 agreement as is acceptable to the owner and the department.

237 (f) The owner shall, not later than 7 days after the execution thereof, provide the department with  
238 a copy of any new or amended purchase contract executed with respect to the property during the 2 year  
239 period set forth in subsections (c) to (e), inclusive, and shall not later than 7 days after the recording or  
240 filing thereof, provide the department with a copy of any deed or other document transferring the owner's  
241 interest in the publicly-assisted housing development.

242 (g) Any submission to the department of a third party purchase contract, amended third party  
243 purchase contract, deed or other document transferring the owner's interest in the publicly-assisted  
244 housing development shall include a certification by the owner and, with respect to a document executed  
245 by the third party buyer, the third party buyer, that the document is accurate and complete and there are  
246 no other agreements between the owner and the third party buyer, or an affiliate of either of them, with  
247 respect to the sale of the publicly-assisted housing development.

248 Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

249 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by  
250 eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a  
251 foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the department,  
252 is to a purchaser pursuant to terms and conditions that preserve affordability; (v) a proposed sale of a  
253 publicly-assisted development which the department has determined has section 8 contracts for all of the  
254 units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based  
255 section 8 assistance, or any successor program, for all units in the development provided that at the time  
256 of such renewal, such assistance is available to the owner on economic terms and conditions that are  
257 comparable to the existing assistance contract; (vi) a proposed sale of a publicly-assisted development to  
258 an affiliate of the owner that is not a termination as determined by the department; and (vii) a proposed  
259 sale pursuant to an agreement in effect on the effective date of this chapter.

260 (b) An owner seeking an exemption under clause (iv), (v) or (vi) of subsection (a) shall include  
261 the name and address of any tenant organization in the request and shall provide a copy of its request to  
262 the chief executive officer of the affected municipality, CEDAC, the local legal services organization as  
263 designated by the department and the tenant organization at the time it files its exemption request with the  
264 department. The department shall provide a copy of its written determination under said clauses (iv), (v)  
265 or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the tenant  
266 organization.

267 Section 7. For 3 years after termination, the rent for a protected low-income tenant who does not  
268 receive an enhanced section 8 voucher shall not be increased more than once annually by the increase in  
269 the consumer price index applicable to the area in which the publicly-assisted housing development is  
270 located during the preceding 12 months plus 3 per cent. The foregoing shall not apply to a low-income  
271 tenant: (i) who is income eligible for an enhanced section 8 voucher but does not obtain one solely due to



272 some action or inaction of the tenant on or after the date he or she is eligible to apply for the enhanced  
273 section 8 voucher; or (ii) who would be eligible for an enhanced section 8 voucher if this provision was  
274 not in effect. For a period of 3 years after termination, a protected low income tenant shall not be evicted  
275 or involuntarily displaced from his apartment except for good cause related to tenant fault.

276 Section 8. A purchase by the department or by a purchaser pursuant to this chapter shall be  
277 subject to a regulatory agreement.

278 Section 9. An owner who has complied with sections 2 and 3 which has not resulted in a  
279 purchase by the department or which has resulted in a sale pursuant to section 4 may apply to the  
280 department for a certificate of compliance by submitting a written request for the certificate in a form and  
281 with such documentation as required by the department to establish the owner's compliance to the  
282 satisfaction of the department. At the same time, the owner shall provide a copy of the request to  
283 CEDAC and the chief executive officer of the affected municipality. The owner shall provide a copy of  
284 the owner's request to a tenant of the publicly-assisted housing upon request. The department shall issue  
285 the certificate of compliance within 30 days after receipt of the application if it determines that the owner  
286 has complied with said sections 2 and 3. The certificate of compliance shall be filed with the registry of  
287 deeds within 1 year after the date of issuance.

288 SECTION 2. Within 45 days after the effective date of this act, the department of housing and  
289 community development shall establish a 13-member advisory committee to consist of the undersecretary  
290 of the department or her designee, the executive director of the Community Economic Development  
291 Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected  
292 by the Massachusetts Municipal Association, 1 member selected by Citizens Housing and Planning  
293 Association, 1 member selected by the Greater Boston Real Estate Board, 1 member selected by the Real  
294 Estate Bar Association for Massachusetts, 1 member selected by the Massachusetts Association of  
295 Community Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation,

296 1 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support  
297 Corporation, 1 member selected by the Massachusetts Chapter of the National Association of Housing  
298 and Redevelopment Officials, and 2 members chosen by the department to provide advice and  
299 recommendations to the department regarding regulations to implement this act. The department shall  
300 promulgate regulations to effectuate the purposes and implement chapter 40T of the General Laws not  
301 later than 150 days after the effective date of this act.

302 SECTION 3. For the purposes of sections 3 and 4 of chapter 40T of the General Laws, housing  
303 that qualified as publicly-assisted housing under any of the programs described in the definition of  
304 "publicly-assisted housing" in section 1 of said chapter 40T that was not then subject to a purchase  
305 contract in existence on the effective date of this act shall be subject to said chapter 40T for 4 years after  
306 the date of the last event or occurrence that constituted a termination.

307 SECTION 4. Notwithstanding subsection (a) of section 2 of chapter 40T of the General Laws, an  
308 owner of publicly assisted housing who, on the effective date of this act, has less than 2 years remaining  
309 prior to the date when the affordability restriction will cease to apply to such property, shall not be  
310 required to give the 2-year notice required by said subsection (a), but shall provide such notice within 90  
311 days of the effective date of this act. Notwithstanding subsection (b), an owner who, on the effective date  
312 of this act has less than 1 year remaining prior to a termination shall not be required to give the 12-month  
313 notice required by subsection (b), but shall provide such notice within 90 days after the effective date of  
314 this act.

May 2009

## Massachusetts House of Representatives Bill Summary

**Bill No:** H 3573

**Title:** An Act preserving publicly assisted affordable housing.

**Sponsor:** Representative Honan

**Committee:** Housing

**Hearing Date:** 5.05.09

**Similar Matters:** S 666

**Prior History:** S 2799 (redraft of S 782) of 2007

**Current Law:**

**Summary:**

**Summary:**

Emergency preamble.

**SECTION 1: Creates Chapter 40T for the Preservation of Publicly Assisted Housing**

**Section 1. Definitions.**

**Section 2. Notices.**

(a) Requires written notice of intent be given not less than 24 months prior to affordability termination.

(b) Requires owner to give notice of intent to complete termination no less than 12 months before termination.

**Section 3. Right of First Offer**

As of the effective date of this chapter, publicly assisted housing not subject to a purchase contract and no longer receiving government assistance shall be subject to this provision for 4 years from the date of the last termination.

(a) Requires owner to offer the department an opportunity to purchase the publicly assisted property.

(b) The department may select a designee to act on its behalf. Upon written request, the department shall immediately designate the affected municipality its designee unless the department determines that such request is not approvable for reasons set forth in the department's regulations.

(c) Requires municipality/designee to submit an offer within 90 days from receiving notice of the owner's intent to sell. If the owner and the department do not enter into an agreement, the owner is free to enter into an agreement to sell the property to a third party subject to the department's right of first refusal

(d) Requires owner to comply with any reasonable request for documents within 10 days of such a request.

(e) Within 30 days of submitting an offer to purchase the publicly assisted housing development, the department shall give the affected tenants a written notice of its intent to purchase the property and also meet with the tenants to discuss its plans

#### Section 4. Right of 1<sup>st</sup> Refusal

As of the effective date of this chapter, publicly assisted housing not subject to a purchase contract and no longer receiving government assistance shall be subject to this provision for 4 years from the date of the last termination.

- (a) The department or its designee shall have a right of first refusal to purchase any publicly assisted housing development.
- (b) The owner shall provide a copy of the third party purchase contract along with proposed purchase contract for execution by the department. The proposed purchase contract shall contain the same terms and conditions as the executed third party purchase contract.
- (c) If the department fails to execute the proposed purchase contract within 30 days or such other period, the owner shall have 24 months to execute the proposed purchase contract to any third party. Upon expiration of the 24 months, the owner shall be subject to all of the provisions of this statute.
- (d) If the department or its designee fails to timely execute the proposed purchase contract within the 30 day period provided or if the contract was executed but a sale is not completed or if the third party purchase contract is terminated by mutual agreement of the owner and the department, then the owner shall h
- (e) Allows DHCD to make counter offers.
- (f) The owner shall within 7 days of execution, provide the department with a copy of any new or amended purchase contract executed with respect to the property during the 2 year period set forth in this section
- (g) Third party purchase terms must be verified by DHCD

## Section 5.

For the purposes of this chapter, an affected municipality shall not be subject to the provisions of section 16 of chapter 30B.

## Section 6. Exemptions.

(a) The provisions of Section 3 of this chapter shall not apply to any of the following:

- (1) a government taking by eminent domain
- (2) a forced sale pursuant to foreclosure
- (3) a deed-in-lieu of foreclosure
- (4) a proposed sale that, as determined by the department, is to a qualified purchaser pursuant to terms and conditions that preserves affordability
- (5) a proposed sale of a publicly assisted development which the department has determined has a section 8 contract, for all of the units in the development and the buyer has agreed to renew project-based section 9 assistance
- (6) a proposed sale pursuant to a binding agreement in effect on the effective date of this chapter

(b) An owner seeking an exemption shall provide a copy of its request to the municipality, CEDAC, local legal services organization, and tenant organization

## Section 7. Tenant Protections

For a period of 3 years after a termination, the rent for a low income tenant who does not receive an enhanced section 8 voucher may not be increased more than once annually by the consumer price index for the prior 12 months plus 3%.

## Section 8. Preserving Affordability

Any purchase by the department or its designee shall be subject to a regulatory agreement.

## Section 9. Certificate of Compliance.

An owner who has complied with the provisions of sections 2 and 3, which has not resulted in a purchase by a municipality or its designee, may apply to the department for a certificate of compliance by submitting a written request in the form deemed necessary by the department to establish compliance. The department shall issue the certificate within 30 days of receipt of application. Upon issuance, the certificate shall be filed with the registry of deeds.

## SECTION 2. Advisory Committee/Regulations

Within 45 days of the passage of this chapter, the department shall establish a 12-member advisory committee, to consist of the undersecretary of the department or her designee, the executive director of the Community Economic Development Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected by the Massachusetts Municipal Association, 1 member selected by Citizens' Housing and Planning Association, 1 member selected by the Greater Boston Real Estate Board, 1 member selected by the Real Estate Bar Association for Massachusetts, 1 member selected by the Massachusetts Association of Community Development Corporations, 1 member selected by Massachusetts Legal Assistance Corporation, 1 member of MassNAHRO, 1 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support Corporation, and 2 additional members chosen by the department to provide advice and recommendations to the department regarding regulations to implement this act; provided further, that the department shall promulgate regulations to effectuate the purposes and to implement the provisions of this chapter within 150 days of the passage of this chapter.

SECTION 3: Properties whose use restrictions have expired within four years of the passage of this act shall be subject to Chapter 40T

**HOUSE . . . . . No. 3573**

**The Commonwealth of Massachusetts**

**PRESENTED BY:**

**Kevin G. Honan**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General.  
Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act preserving publicly assisted affordable housing.**

**PETITION OF:**

<b>NAME:</b>	<b>DISTRICT/ADDRESS:</b>
Kevin G. Honan	17th Suffolk
Cleon H. Turner	1st Barnstable
Sarah K. Peake	4th Barnstable
William Lantigua	16th Essex
Christine E. Canavan	10th Plymouth
Matthew C. Patrick	3rd Barnstable
Elizabeth A. Malia	11th Suffolk
Martha M. Walz	8th Suffolk
Todd M. Smola	1st Hampden
John P. Fresolo	16th Worcester
Louis L. Kafka	8th Norfolk
William N. Brownsberger	24th Middlesex
Michael J. Moran	18th Suffolk
Cheryl A. Coakley-Rivera	10th Hampden
Carl M. Sciortino, Jr.	34th Middlesex
Denise Provost	27th Middlesex
Antonio F.D. Cabral	13th Bristol
Steven J. D'Amico	4th Bristol
Christopher J. Donelan	2nd Franklin

James B. Eldridge	Middlesex and Worcester
Peter v. Kocot	1st Hampshire
Stephen L. DiNatale	3rd Worcester
John V. Fernandes	10th Worcester
William Lantigua	16th Essex
Timothy J. Toomey, Jr.	26th Middlesex
Tom Sannicandro	7th Middlesex
John W. Scibak	2nd Hampshire
Linda Dorcena Forry	12th Suffolk
Kate Hogan	3rd Middlesex
Kay Khan	11th Middlesex
Martin J. Walsh	13th Suffolk
Barbara A. L'Italien	18th Essex
Kathi-Anne Reinstein	16th Suffolk
Michael F. Rush	10th Suffolk
Kevin Aguiar	7th Bristol
Geraldo Alicea	6th Worcester
Katherine Clark	32nd Middlesex
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Sean Garballey	23rd Middlesex
Denis E. Guyer	2nd Berkshire
Mary E. Grant	6th Essex
Lida E. Harkins	13th Norfolk
Jonathan Hecht	29th Middlesex
James J. O'Day	14th Worcester District
Alice Hanlon Peisch	14th Norfolk
Steven M. Walsh	11th Essex
Byron Rushing	9th Suffolk
Jeffrey Sánchez	15th Suffolk
Thomas M. Stanley	9th Middlesex
Ellen Story	3rd Hampshire
Peter J. Koutoujian	10th Middlesex
Harriette L. Chandler	First Worcester
Patricia D. Jehlen	Second Middlesex
Colleen M. Garry	36th Middlesex
David B. Sullivan	6th Bristol
Cynthia Stone Creem	First Middlesex and Norfolk
Thomas M. McGee	Third Essex and Middlesex
Kenneth J. Donnelly	Fourth Middlesex
Thomas P. Kennedy	Second Plymouth and Bristol
James E. Timilty	Bristol and Norfolk
Benjamin Swan	11th Hampden



Robert A. O'Leary

Susan C. Tucker

Cape and Islands

Second Essex and Middlesex

Case No.	Plaintiff	Defendant	Amount	Date	Remarks
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# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT PRESERVING PUBLICLY ASSISTED AFFORDABLE HOUSING.

*Whereas*, The deferred operation for this act would tend to defeat its purpose, which is forthwith to preserve publicly assisted affordable housing for certain low-income residents, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1                   SECTION 1. The General Laws are hereby amended by inserting after chapter 40S the  
2 following chapter:

3   CHAPTER 40T

4   PUBLICLY-ASSISTED AFFORDABLE HOUSING.

5                   Section 1. As used in this chapter, the following words shall have the following meanings unless  
6 the context clearly requires otherwise:

7                   “Affected municipality”, any city or town in which publicly-assisted housing, or a publicly-  
8 assisted housing development, is located.

9                   “Affiliate”, an entity owned or controlled by an owner.

10           “Affordability restriction”, a limit on rents that an owner may charge for occupancy of a rental  
11 unit in a publicly assisted housing development or a limit on tenant income for persons or families  
12 seeking to qualify for admission to such housing.

13           “CEDAC”, the Community Economic Development Assistance Corporation established in  
14 chapter 40H.

15           “Chief executive officer”, the mayor in a city and the board of selectmen in a town unless  
16 otherwise is designated by a municipal charter.

17           “Department”, the department of housing and community development or, when applicable, its  
18 designee, or any successor agency of the department.

19           “Designee”, a municipality, local or regional housing authority, nonprofit or for-profit  
20 corporation or other entity qualified to do business in the commonwealth and, which is selected by the  
21 department to operate publicly-assisted housing that is decent, safe and sanitary affordable housing, under  
22 subsection (b) of section 3.

23           “Enhanced section 8 vouchers”, vouchers provided under 42 U.S.C. 1437f(t) or other  
24 substantially equivalent assistance.

25           “Extremely low income”, a household income of not more than 30 per cent of the area median  
26 income, adjusted for household size, as periodically determined by the United States Department of  
27 Housing and Urban Development.

28           “Government program”, a program which provides government assistance under a program set  
29 forth in the definition of publicly-assisted housing.

30 "Low income", a household income of not more than 80 per cent of the area median income,  
31 adjusted for household size, as periodically determined by the United States Department of Housing and  
32 Urban Development.

33 "Owner", a person, firm, partnership, corporation, trust, organization, limited liability company or  
34 other entity, or its successors or assigns, that holds title to a publicly-assisted housing development.

35 "Prepayment", (i) the payment in full or the refinancing of a governmental-insured or  
36 government-held mortgage indebtedness prior to its original maturity date; (ii) the voluntary cancellation  
37 of mortgage insurance on a publicly assisted housing development; or (iii) the payment in full on a  
38 government contract, any of which would have the effect of removing either: (i) the affordability  
39 restrictions applicable to the publicly-assisted housing development; or (ii) a requirement to renew any  
40 such affordability restrictions.

41 "Preserve affordability", with respect to a publicly-assisted housing development, to undertake  
42 reasonable and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing  
43 development in order to maintain at least the same number of units affordable to low, very low and  
44 extremely low-income households, respectively, as are currently occupied by such households, and to  
45 maintain as affordable to such households generally all units that are currently vacant, to the extent of  
46 available subsidies and taking into account the need to ensure that the development provides quality  
47 housing to its tenants.

48 "Protected low-income tenant", a low-income tenant residing in a publicly-assisted housing  
49 development on the date of termination of the government program and whose rent was restricted by that  
50 government program.

51 "Publicly-assisted housing", a housing unit or development that receives government assistance  
52 under any of the following programs: (i) section 8 of the United States Housing Act of 1937 and 42  
53 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation,

54 property disposition and loan management set-aside programs or any other program providing project-  
55 based rental assistance; (ii) section 42 of the Internal Revenue Code and 26 U.S.C. section 42, the federal  
56 Low-Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act  
57 of 1965 and 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder;  
58 (iv) section 202 of the Housing Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the  
59 National Housing Act 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)  
60 section 221(d)(4) of the National Housing Act 12 U.S.C. section 1715I (d)(4) to the extent the project's  
61 rents are restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act  
62 and 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section 1485;  
63 (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban Development  
64 Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to  
65 such program are restricted pursuant to a government agreement; (xi) the Housing Development Action  
66 Grant, and 42 U.S.C. section 1437o to the extent the project's rents are restricted pursuant to a  
67 government agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program  
68 provided for annually in item 7004-9024 of section 2 of the general appropriation act as that program  
69 applies to project-based rental assistance; (xiv) the Massachusetts low income housing tax credit program  
70 established in section 6I of chapter 62; (xv) the State Housing Assistance for Rental Production, chapter  
71 established in 574 of the acts of 1983; and (xvi) chapter 121A to the extent that the affordability of  
72 dwelling units are restricted pursuant to a written agreement with the affected municipality.

73 "Purchase contract", a document that purports to sell a publicly-assisted housing development  
74 including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other  
75 similar instrument.

76 "Regulatory agreement", an affordable housing restriction that establishes an owner's obligations  
77 created pursuant to the efforts of the department or its designee to preserve affordability and which is  
78 consistent with section 31 of chapter 184 provided that in any project that is eligible for participation in

79 the HUD mark up to market program, the restriction, insofar as it relates to the limiting of the level of  
80 rents, shall not apply to units covered by a section 8 housing assistance payment contract so long as such  
81 contract is effective.

82 "Sale", the execution of a written agreement pursuant to which the owner or the holders of an  
83 ownership interest in the owner of the publicly assisted housing agrees to the disposition of the property  
84 by deed or otherwise, whether through a single transaction or a series of transactions, except for a  
85 disposition of such housing to an affiliate of the owner.

86 "Subsidy", public financial assistance including, but not limited to, grants, loans, rental  
87 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance pursuant to  
88 any government program or any other form of assistance, intended to make housing affordable to low-  
89 income households, especially very low and extremely low-income households.

90 "Tenant", a person legally entitled to possession or occupancy of a rental unit within publicly-  
91 assisted housing, including a subtenant, lessee and sublessee.

92 "Tenant organization", an organization established by the tenants of a publicly-assisted housing  
93 development for the purpose of addressing issues related to their living environment and which meets  
94 regularly, operates democratically, is representative of all residents in the development, is completely  
95 independent of owners, management and their representatives and which has filed a notice of its existence  
96 with CEDAC; provided, however, that, no owner or other third party shall be required to ascertain the  
97 organization's compliance with this definition.

98 "Termination", the cessation, discharge or removal of an affordability restriction affecting a  
99 publicly-assisted housing development in the absence of a simultaneous replacement of that restriction  
100 with an equivalent affordability restriction including, but not limited to: (i) nonrenewal or termination, in  
101 whole or in part, of a government program contract or mortgage; (ii) expiration, in whole or in part, of an  
102 affordability restriction under a government program or the requirement to renew the restriction; (iii)

103 payment in full of a government program mortgage; or (iv) prepayment of a government program  
104 mortgage or contract.

105 "Time for performance", the date for delivery of the deed or other document evidencing a sale  
106 pursuant to a purchase contract or any extension thereof.

107 "Very low income", having a household income of not more than 60 percent of the area median  
108 income, adjusted for household size, as periodically determined by the United States Department of  
109 Housing and Urban Development.

110 Section 2. (a) Except with respect to property subject to an affordability restriction which has  
111 less than 2 years remaining and, for which subsection (e) shall, apply, the owner shall provide written  
112 notice to: (i) all tenants and the tenant organization; (ii) the chief executive officer of the affected  
113 municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the  
114 affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from  
115 taking actions to terminate an affordability restriction during any notice period provided herein; provided,  
116 however, that the owner shall comply with all of the notice terms and restrictions pursuant to subsections  
117 (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted housing; (2)  
118 the name and address of the owner; (3) notification that an affordability restriction may terminate; (4) the  
119 date on which each affordability restriction may terminate; and (5) such other information as required by  
120 the department. Where more than 1 termination may occur, the owner may send 1 written notice so long  
121 as the terminations are scheduled to occur within 1 year of each other, the notice is given at least 24  
122 months before the earliest termination and the notice otherwise complies with this subsection.

123 (b) An owner shall not complete a termination or allow a termination to occur unless, not less  
124 than 1 year before the completion of the last termination event affecting the housing, the owner provides  
125 the entities identified in subsection (a) with written notice of intent to complete termination. The notice  
126 shall state: (1) the address of the publicly-assisted housing; (2) the name and address of the owner; (3) the

127 date on which the owner intends to complete termination; (4) unless section 6 applies, a statement that the  
128 department has the right of offer pursuant to section 3; and (5) such other information as required by the  
129 department.

130 (c) An owner shall not sell publicly-assisted housing before offering the department the  
131 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in writing, the  
132 parties identified in subsection (a) of the owner's intention to potentially sell the property.

133 (d) A notice required by this chapter shall be deemed given when delivered in person or mailed  
134 by certified or registered mail, return receipt requested, to the party to whom notice is required. A notice  
135 to the affected municipality shall be awarded to the chief executive officer.

136 (e) The notice requirements of this section shall not be affected by the status of an offer,  
137 purchase contract or sale under section 3 or section 4.

138 Section 3. (a) An owner shall offer the department an opportunity to purchase the property prior  
139 to entering into an agreement to sell the property pursuant to the time periods contained in this section,  
140 but no owner shall be under any obligation to enter into an agreement to sell such property to the  
141 department.

142 (b) The department may select a designee to act on its behalf as purchaser of the publicly-  
143 assisted housing and shall give the owner and CEDAC written notice of its selection. The department  
144 shall promptly consult with the affected municipality before selecting a designee and shall immediately  
145 designate the affected municipality as its designee upon written request of the affected municipality,  
146 unless the department determines that such request is not feasible for reasons set forth in the department's  
147 regulations. The department shall enter into a written agreement with its selected designee providing that  
148 the designee and any of its successors or assigns, agree to preserve the affordability of the publicly  
149 assisted housing. Once such an agreement is executed, the designee shall assume all rights and  
150 responsibilities attributable to the department as a prospective purchaser under this section and section 4.



151 At any time prior to a sale under section 3 or section 4, the department may revoke its designation and  
152 assume the designee's rights and responsibilities, either in its own capacity or by selecting a new,  
153 designee; provided, however, that no change in a designation shall operate to extend or alter any time  
154 periods for performance set forth in this chapter or in any purchase contract entered into pursuant to this  
155 chapter.

156 (c) The department shall, within 90 days after it receives notice pursuant to section 2 of the  
157 owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure  
158 by the department to submit a timely offer shall constitute an irrevocable waiver of the department's  
159 rights under this section and the owner may sell the publicly-assisted housing subject to section 4. If the  
160 owner accepts the department's initial or any revised offer, the owner and the department shall enter into  
161 such other agreements as are necessary and appropriate to complete the sale. If the owner and the  
162 department have not entered into an agreement to sell the property to the department within 90 days after  
163 receipt of the notice pursuant to subsection (c) of section 2, the owner may enter into an agreement to sell  
164 the property to a purchaser of the owner's choice, subject to the department's right of first refusal  
165 pursuant to section 4.

166 (d) At any time after the notice in section 2 has been provided and within 10 days of receiving a  
167 request, the owner shall make documents available to the department for review and photocopying during  
168 normal business hours at the owner's principal place of business or at a commercial photocopying facility.  
169 Such documents shall include, but not limited to: (1) any existing architectural plans and specifications of  
170 the development; (2) itemized lists of monthly operating expenses and capital expenditures in each of the  
171 2 preceding calendar years; (3) any capital needs studies or market studies that have been submitted to a  
172 federal, state, or local agency in the preceding 3 years; (4) utility consumption rates for the preceding 12  
173 months; (5) copies of the last 2 annual financial and physical inspection reports filed with federal, state or  
174 local agencies; (6) the most recent rent roll showing then current vacancies and rent arrearages; (7) a list  
175 of vacant units; and (8) a statement of the approximate annualized vacancy rate at the development for

176 each of the 2 preceding calendar years. Documents obtained pursuant to a request under this subsection  
177 shall not be considered public records, as defined in clause Twenty-sixth of section 7 of chapter 4, and the  
178 department shall not make such documents available to the public without the written consent of the  
179 owner or pursuant to a court order, provided, however, that disclosure may be made to potential funding  
180 sources, regulatory agencies or agents or consultants of the department in connection with the transaction,  
181 subject to appropriate confidentiality agreements. Upon request and with appropriate notice, the owner  
182 shall also permit reasonable inspections of the dwelling units, building systems, common areas, and  
183 common grounds by agents, consultants and representatives of the department including, but not limited  
184 to, inspections related to environmental, engineering, structural or zoning matters.

185 (e) Not later than 30 days after the department submits an offer to purchase the publicly-assisted housing  
186 development pursuant to subsection (c), the department shall notify tenants in the housing development  
187 and shall meet with them at least once to discuss the department's plans.

188 Section 4. (a) The department shall have a right of first refusal to purchase any publicly-assisted  
189 housing development under this section. At any time after the 90 days the department has been given  
190 notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such  
191 notice, the owner may execute a purchase contract with a third party to sell the publicly-assisted housing  
192 development provided that the owner complies with this section. Thereafter, the owner again shall be  
193 subject to the notice provision of subsection (c) of section (2).

194 (b) Upon execution of a third party purchase contract, the owner shall, within 7 days, submit a  
195 copy of the contract to the department and CEDAC, along with a proposed purchase contract for  
196 execution by the department. The department shall, within 30 days after receipt of the third party  
197 purchase contract and the proposed purchase contract, execute the proposed purchase contract or such  
198 other agreement as is acceptable to the owner and the department. The time periods set forth in this  
199 subsection may be extended by agreement between the owner and the department. The proposed

200 purchase contract shall contain the same terms and conditions as the executed third party purchase  
201 contract, except that the proposed purchase contract shall provide at least the following terms: (i) the  
202 earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase contract;  
203 (2) 2 per cent of the sales price; or (3) \$250,000; provided, however, that the earnest money deposit shall  
204 be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the  
205 department; (ii) the earnest money deposit shall be nonrefundable unless the owner fails to perform its  
206 obligations with due diligence for a period of not less than 90 days from the date of execution of the  
207 purchase contract or such greater period as provided for in the third party purchase contract; and (iii) the  
208 time for performance shall be not less than 240 days from the date of the execution of the purchase  
209 contract, or such greater period as provided for in the third party purchase contract.

210 (c) If the department fails to execute the proposed purchase contract within 30 days or such other  
211 period as provided in subsection (b), the owner shall have 24 months from the last day on which the  
212 department was entitled to execute the proposed purchase contract in which to complete the sale of the  
213 owner's publicly-assisted housing development to a third party, except as provided in subsection (e).  
214 Upon the expiration of the 24-month period, the owner shall be subject again to all of subsection (c) of  
215 section 2, section 3 and this section.

216 (d) If the department executes the proposed purchase contract as provided in subsection (b) but  
217 fails to perform as provided in the executed purchase contract, then the owner shall have 2 years from the  
218 date on which the proposed purchase contract terminated in which to complete the sale of the owner's  
219 publicly-assisted housing development to a third party on economic terms and conditions that are not  
220 materially more favorable to the proposed purchaser than the economic terms and conditions in the  
221 proposed purchase contract offered to the department. Upon the expiration of the 24-month period, the  
222 owner shall be subject to subsection (c) of section 2, section 3 and this section.

223 (e) The department may make a counter offer by executing and submitting to the owner an  
224 amended proposed purchase contract. The owner shall have 30 days from the date it receives the  
225 amended proposed purchase contract to execute the amended proposed purchase contract or reject, in  
226 writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months from the date on  
227 which the owner rejects the department's counter offer to complete the sale of the owner's publicly-  
228 assisted housing development to a third party, provided, however, that if such sale is: (i) upon economic  
229 terms and conditions that are materially more favorable to the proposed purchaser than the economic  
230 terms and conditions in the proposed purchase contract offered to the department; or (ii) upon terms that  
231 are substantially the same as was offered by the department in the counter offer, then the owner shall  
232 provide a copy of the new third party purchase contract, along with a proposed purchase contract for  
233 execution by the department which shall contain the same terms and conditions as the executed third party  
234 purchase contract, and the department shall have 30 days from the date it receives the third party purchase  
235 contract and the proposed purchase contract to execute the proposed purchase contract or such other  
236 agreement as is acceptable to the owner and the department.

237 (f) The owner shall, not later than 7 days after the execution thereof, provide the department with  
238 a copy of any new or amended purchase contract executed with respect to the property during the 2 year  
239 period set forth in subsections (c) to (e), inclusive, and shall not later than 7 days after the recording or  
240 filing thereof, provide the department with a copy of any deed or other document transferring the owner's  
241 interest in the publicly-assisted housing development.

242 (g) Any submission to the department of a third party purchase contract, amended third party  
243 purchase contract, deed or other document transferring the owner's interest in the publicly-assisted  
244 housing development shall include a certification by the owner and, with respect to a document executed  
245 by the third party buyer, the third party buyer, that the document is accurate and complete and there are  
246 no other agreements between the owner and the third party buyer, or an affiliate of either of them, with  
247 respect to the sale of the publicly-assisted housing development.

248 Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

249 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by  
250 eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a  
251 foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the department,  
252 is to a purchaser pursuant to terms and conditions that preserve affordability; (v) a proposed sale of a  
253 publicly-assisted development which the department has determined has section 8 contracts for all of the  
254 units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based  
255 section 8 assistance, or any successor program, for all units in the development provided that at the time  
256 of such renewal, such assistance is available to the owner on economic terms and conditions that are  
257 comparable to the existing assistance contract; (vi) a proposed sale of a publicly-assisted development to  
258 an affiliate of the owner that is not a termination as determined by the department; and (vii) a proposed  
259 sale pursuant to an agreement in effect on the effective date of this chapter.

260 (b) An owner seeking an exemption under clause (iv), (v) or (vi) of subsection (a) shall include  
261 the name and address of any tenant organization in the request and shall provide a copy of its request to  
262 the chief executive officer of the affected municipality, CEDAC, the local legal services organization as  
263 designated by the department and the tenant organization at the time it files its exemption request with the  
264 department. The department shall provide a copy of its written determination under said clauses (iv), (v)  
265 or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the tenant  
266 organization.

267 Section 7. For 3 years after termination, the rent for a protected low-income tenant who does not  
268 receive an enhanced section 8 voucher shall not be increased more than once annually by the increase in  
269 the consumer price index applicable to the area in which the publicly-assisted housing development is  
270 located during the preceding 12 months plus 3 per cent. The foregoing shall not apply to a low-income  
271 tenant: (i) who is income eligible for an enhanced section 8 voucher but does not obtain one solely due to

272 some action or inaction of the tenant on or after the date he or she is eligible to apply for the enhanced  
273 section 8 voucher; or (ii) who would be eligible for an enhanced section 8 voucher if this provision was  
274 not in effect. For a period of 3 years after termination, a protected low income tenant shall not be evicted  
275 or involuntarily displaced from his apartment except for good cause related to tenant fault.

276 Section 8. A purchase by the department or by a purchaser pursuant to this chapter shall be  
277 subject to a regulatory agreement.

278 Section 9. An owner who has complied with sections 2 and 3 which has not resulted in a  
279 purchase by the department or which has resulted in a sale pursuant to section 4 may apply to the  
280 department for a certificate of compliance by submitting a written request for the certificate in a form and  
281 with such documentation as required by the department to establish the owner's compliance to the  
282 satisfaction of the department. At the same time, the owner shall provide a copy of the request to  
283 CEDAC and the chief executive officer of the affected municipality. The owner shall provide a copy of  
284 the owner's request to a tenant of the publicly-assisted housing upon request. The department shall issue  
285 the certificate of compliance within 30 days after receipt of the application if it determines that the owner  
286 has complied with said sections 2 and 3. The certificate of compliance shall be filed with the registry of  
287 deeds within 1 year after the date of issuance.

288 SECTION 2. Within 45 days after the effective date of this act, the department of housing and  
289 community development shall establish a 13-member advisory committee to consist of the undersecretary  
290 of the department or her designee, the executive director of the Community Economic Development  
291 Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected  
292 by the Massachusetts Municipal Association, 1 member selected by Citizens Housing and Planning  
293 Association, 1 member selected by the Greater Boston Real Estate Board, 1 member selected by the Real  
294 Estate Bar Association for Massachusetts, 1 member selected by the Massachusetts Association of  
295 Community Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation,

296 1 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support  
297 Corporation, 1 member selected by the Massachusetts Chapter of the National Association of Housing  
298 and Redevelopment Officials, and 2 members chosen by the department to provide advice and  
299 recommendations to the department regarding regulations to implement this act. The department shall  
300 promulgate regulations to effectuate the purposes and implement chapter 40T of the General Laws not  
301 later than 150 days after the effective date of this act.

302 SECTION 3. For the purposes of sections 3 and 4 of chapter 40T of the General Laws, housing  
303 that qualified as publicly-assisted housing under any of the programs described in the definition of  
304 "publicly-assisted housing" in section 1 of said chapter 40T that was not then subject to a purchase  
305 contract in existence on the effective date of this act shall be subject to said chapter 40T for 4 years after  
306 the date of the last event or occurrence that constituted a termination.

307 SECTION 4. Notwithstanding subsection (a) of section 2 of chapter 40T of the General Laws, an  
308 owner of publicly assisted housing who, on the effective date of this act, has less than 2 years remaining  
309 prior to the date when the affordability restriction will cease to apply to such property, shall not be  
310 required to give the 2-year notice required by said subsection (a), but shall provide such notice within 90  
311 days of the effective date of this act. Notwithstanding subsection (b), an owner who, on the effective date  
312 of this act has less than 1 year remaining prior to a termination shall not be required to give the 12-month  
313 notice required by subsection (b), but shall provide such notice within 90 days after the effective date of  
314 this act.